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11 THE HONORABLE RONALD B. LEIGHTON
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15 UNITED STATES DISTRICT COURT
16 WESTERN DISTRICT OF WASHINGTON
17 AT TACOMA

18 F/V PREDATOR, INC.,
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20 Plaintiff,
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22 v.
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24 FEDERAL INSURANCE COMPANY
25 THROUGH CHUBB GROUP, and GREAT
26 AMERICAN INSURANCE COMPANY OF
27 NEW YORK,
28

29 Defendants.
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IN ADMIRALTY

NO. 3:08-cv-05080-RBL

STIPULATION AND ORDER RE:
SEALING FIRST AMENDED
COMPLAINT AND FILING
SUBSTITUTED FIRST AMENDED
COMPLAINT

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32 The parties stipulate and request the following relief: (1) that Plaintiff's First Amended
33 Complaint be sealed; (2) that Plaintiff's Substituted First Amended Complaint, attached at
34 Exhibit A, be filed without seal; and (3) that the filing of Plaintiff's Substituted First Amended
35 Complaint relate back to the original June 26, 2009 filing date of Plaintiff's First Amended
36 Complaint.
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STIPULATION AND [PROPOSED] ORDER RE: SEALING
FIRST AMENDED COMPLAINT AND FILING
SUBSTITUTED FIRST AMENDED COMPLAINT - 1

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II. STIPULATION

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A. Applicable Standard for Sealing Court Records.

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While there is a strong presumption of public access to the court's files and records, such
presumption may be overcome by a "compelling showing that the public's right is outweighed
by the interests of the public and the parties in protecting files, records, or documents from
public review." Local Fed. R. Civ. P. 5(g)(1). "The court may order the sealing of any files and
records on motion of any party, on stipulation and order, or on the court's own motion." Local
Fed. R. Civ. P.5(g)(2). "The law requires, and the motion and the proposed order shall include, a
clear statement of the facts justifying a seal and overcoming the strong presumption in favor of
public access." *Id.*

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In order to limit this right of access, a party seeking to seal records must show
"compelling reasons supported by specific factual findings . . . outweigh the general history of
access and the public policies favoring disclosure." *Pintos v. Pac. Creditors Ass'n*, 565 F.3d
1106, 1115 (9th Cir. 2009). Under this standard, a court must: (1) weigh relevant facts; (2) base
its decision on a compelling reason; and (3) articulate the factual basis for its ruling, without
relying on hypothesis or conjecture." *Hagestad v. Tragesser*, 49 F.3d 1430, 1434 (9th Cir. 1995).
The court's analysis is reviewed for abuse of discretion. *Foltz v. State Farm Mut. Auto. Ins. Co.*,
331 F.3d 1122, 1135 (9th Cir. 2003).

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B. The Present Circumstances Justify Sealing of Plaintiff's Previously-Filed First Amended Complaint and Substituting for Public-Filing the Attached Proposed First Amended Complaint.

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In December 2006, Plaintiff and Defendants entered into a settlement agreement, which
contained a confidentiality provision. Defendant Great American Insurance Company of New

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STIPULATION AND [PROPOSED] ORDER RE: SEALING
FIRST AMENDED COMPLAINT AND FILING
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1 York (“Great American”) contends Plaintiff’s First Amended Complaint references confidential
2 terms of the settlement agreement. Plaintiff contends that any confidentiality of settlement terms
3 referenced in these paragraphs has been waived by prior public disclosures. The parties believe
4 that their dispute regarding confidentiality will be resolved through subsequent stipulation or, if
5 necessary, subsequent motion. In the interim, the parties agree that the First Amended
6 Complaint should be sealed until the merits of the confidentiality issue can be resolved.
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9 All parties have stipulated below to the filing, without seal, of a substituted First
10 Amended Complaint lessening any harm to the public’s interest in disclosure. This is a
11 temporary request to allow the parties time to adequately address the confidentiality issues. The
12 temporary nature of this request further lessens any harm to the public’s interest.
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15 Accordingly, all parties specifically agree to the following:
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- 18 • Plaintiff’s First Amended Complaint, filed June 26, 2009 [Dkt. No. 38], be
19 sealed based on Defendant Great American’s concerns related to alleged
20 confidential disclosures in the First Amended Complaint.
- 21 • Plaintiff’s Substituted First Amended Complaint, attached at **Exhibit A**,
22 be filed without seal, and that such filing relate back to the original June
23 26, 2009 filing date.

24 DATED: August 11, 2009

25 /s/ Gary L. Shockey
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36 STIPULATION AND [PROPOSED] ORDER RE: SEALING
37 FIRST AMENDED COMPLAINT AND FILING
38 SUBSTITUTED FIRST AMENDED COMPLAINT - 3

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25 /s/ Richard A. Nielsen
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33 *Attorneys for Defendant Federal Insurance Co.*
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37 II. ORDER 38

39 Based on the foregoing stipulation between all parties, IT IS HEREBY ORDERED that:

40 1. Plaintiff's First Amended Complaint [Dkt. No. 38], filed June 26, 2009, be sealed;

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STIPULATION AND [PROPOSED] ORDER RE: SEALING
FIRST AMENDED COMPLAINT AND FILING
SUBSTITUTED FIRST AMENDED COMPLAINT - 4

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1 2. Plaintiff's Substituted First Amended Complaint, attached at **Exhibit A**, be filed
2 without seal, and that such filing relates back to the original June 26, 2009 filing date.
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5 The clerk is hereby directed to file this Order and seal Plaintiff's First Amended
6 Complaint [Dkt. No. 38]. The clerk is further directed to file Plaintiffs' Substituted First
7 Amended Complaint, which is attached at **Exhibit A**, with such filing relating back to June 26,
8 2009.
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11 DATED this 14th day of August, 2009.
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17 RONALD B. LEIGHTON
18 UNITED STATES DISTRICT JUDGE
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23 Presented by:
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25

26 /s/ Gary L. Shockey
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STIPULATION AND [PROPOSED] ORDER RE: SEALING
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STIPULATION AND [PROPOSED] ORDER RE: SEALING
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